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Attorney General of Hawaii

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Attorneys for Director, Department
of Labor and Industrial Relations

'06 FEB 24 A10:06

HAWAII
LABOR RELATIONS BOARD

HAWAII LABOR RELATIONS BOARD
STATE OF HAWAII

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

vs.

BCI dba COCA COLA BOTTLING CO., INC.

Respondent.

CASE NO. OSH 2005-19

STIPULATION AND SETTLEMENT
AGREEMENT; EXHIBIT A; APPROVAL
AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director"), and Respondent BCI dba COCA COLA BOTTLING CO, INC. ("Respondent"), having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about March 29, 2005 to March 31, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 949 Mapunapuna Street, Honolulu, Hawaii 96819.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on June 24, 2005 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$3,575.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the Parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 949 Mapunapuna Street, Honolulu, Hawaii 96819.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation, as amended below, in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit a completed abatement certification to HIOSH no later than ten (10) days after the date this Agreement is approved by the Board; failure to timely do so may result in additional penalties or follow up inspections. HIOSH notes the unique

circumstances surrounding Citation 1 Item 1 and agrees that regular sanitation work (e.g., mopping) is/was an adequate abatement.

5. The Citation is amended as follows:

a. Citation 1 Item 2 and its corresponding \$1,300.00 penalty is entirely deleted.

6. In exchange for the deletion of Citation 1 Item 2 and its corresponding \$1,300.00 penalty, Respondent agrees to do the following:

a. Obtain better personal protective equipment ("PPE"), i.e., PPE with a higher noise reduction rating than the equipment (earplugs) its employees presently use;

b. Implement additional employee training on noise hazards and PPE use;

c. Provide more frequent hearing tests for employees, e.g., perhaps twice a year instead of just annually as the standards require;

d. If tests show employees have sustained hearing losses above allowable limits, i.e., a standard threshold shift, collaborate with HIOSH on ways to abate noise levels, including feasible administrative and/or engineering controls; and

e. Allow HIOSH to conduct a limited inspection specific to reviewing Respondent's compliance with this paragraph at a mutually agreeable time.

7. Respondent shall pay in full the remaining \$2,275.00 penalty for Citation 1 Items 1 and 3 to the Director of Budget and Finance within ten (10) business days of the Board's approval of this Agreement.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Before either party shall attempt to litigate an alleged breach of this Agreement, that party must notify the other party and give it a reasonable opportunity to cure the alleged breach.

11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

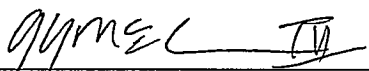
12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.


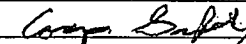
13. None of the foregoing agreements, statements, stipulations, and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the Citation, Complaint, and/or Notification of Penalty. The agreements, statements, stipulations, and actions taken herein are made for the purpose of settling this matter amicably, and they shall not be used for any purpose, except for proceedings and matters arising under the Hawaii Occupational Safety and Health Law.

DATED: Honolulu, Hawaii, February 24, 2006.

APPROVED AS TO FORM:

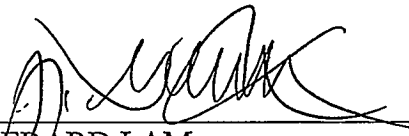
BCI dba COCA COLA BOTTLING CO, INC.


JOSEPH Y. MCCOIN, III
Attorney for Respondent BCI dba
COCA COLA BOTTLING CO., INC.

By: 
Its: 

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

By: 

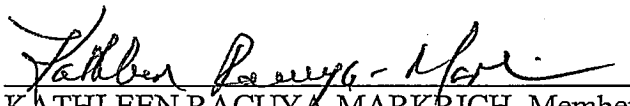
NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 180



BRIAN K. NAKAMURA, Chair



KATHLEEN RACUYA-MARKRICH, Member



EMORY J. SPRINGER, Member

In re: Director, Department of Labor and Industrial Relations vs. BCI dba Coca Cola Bottling Co., Inc., OSH 2005-19, Stipulation and Settlement Agreement, Exhibit "A"; Approval and Order.



State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9090 FAX: (808) 586-9104

Certified Number: 7004 2510 0003 2979 0560

Citation and Notification of Penalty

To:
BCI dba Coca Cola Bottling Co. Inc
and its successors
949 Mapunapuna St
Hon, HI 96819

Inspection Site:
949 Mapunapuna St
Hon, HI 96819

Inspection Number: 308483445 (YunLin Huang)
Inspection Date(s): 03/29/2005 - 03/31/2005
Issuance Date: 06/24/2005
OSHA ID: Z5490
Optional Report No.: 0501
Inspection Type: Programmed Planned
Scope of Inspection: Comprehensive Inspection

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

EXHIBIT A

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to: "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 06/24/2005. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 308483445
Inspection Dates: 03/29/2005 - 03/31/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 06/24/2005

Citation and Notification of Penalty

Company Name: BCI dba Coca Cola Bottling Co. Inc
Inspection Site: 949 Mapunapuna St, Hon, HI 96819

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.22(a)(2) [Refer to chapter 12-72.1, HAR] was violated because:

The employees were exposed to a potential slipping hazard due to the floor surface being wet with water.

29 CFR 1910.22(a)(2) states "The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable."

Location: The side walkway in the operating room

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$975.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 308483445
Inspection Dates: 03/29/2005 - 03/31/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 06/24/2005

Citation and Notification of Penalty

Company Name: BCI dba Coca Cola Bottling Co. Inc
Inspection Site: 949 Mapunapuna St, Hon, HI 96819

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.95(b)(1) [Refer to chapter 12-200.1, HAR] was violated because:

Eight-hour dose percentages of the two employees who worked with filling machines in the room were measured 157% and 168% (90 dB cutoff), respectively. The two employees were exposed to the sound level of 93.6 - 94.0 dB at 8-hour time weight average.

29 CFR 1910.95(b)(1) states "When employees are subjected to sound exceeding those listed in Table G-16, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the levels of Table G-16, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table."

Abatement measures:

1. Inquire manufacturing of the fillers about the feasibility to replace the parts with less noise ones;
2. If the above measure is not feasible, build proper enclosures surrounding the fillers to reduce the noise level;
3. Set the maximum work hours for the employees to work in the filling room, for example, to limit the filling room working time to cumulative six hours for each worker; and,
4. Develop work rules of good practices, for example, to require the workers to close any surrounding guard door or window after it was opened to provide the access for work.

Location: Filling room

Date By Which Violation Must be Abated:
Penalty:

07/27/2005
\$1,300.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 308483445
Inspection Dates: 03/29/2005 - 03/31/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 06/24/2005

Citation and Notification of Penalty

Company Name: BCI dba Coca Cola Bottling Co. Inc
Inspection Site: 949 Mapunapuna St, Hon, HI 96819

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.215(b)(9) [Refer to chapter 12-200.1, HAR] was violated, because:

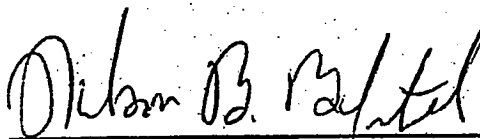
The employees were exposed to the hazard associated with shattering of the wheels when the distance between the tongue and the top of the wheel of a standing grinder was greater than 1/4 inches (as measured 1/2 inches).

29 CFR 1910.215(b)(9) states "Exposure adjustment. Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch (See Figures O-18, O-19, O-20, O-21, O-22, and O-23.)"

Location: Maintenance room

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$1,300.00


NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **308483445**

Mr. Kit McClure
Operations Manager
BCI dba Coca Cola Bottling Co
949 Mapunapuna Street
Honolulu, Hawaii 96819

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature **X** *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) **KAREN JUSA** C. Date of Delivery **6/27/05**

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7004 2510 0003 2979 0560

PS Form 3811, February 2004

Domestic Return Receipt

102585-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | | |
|--------|--|-------------|------------------|
| Safety | Postage \$ | 83 | 308483445 |
| | Certified Fee | 2.30 | |
| | Return Receipt Fee (Endorsement Required) | 1.75 | |
| | Restricted Delivery Fee (Endorsement Required) | | |
| | Total Postage & Fees | 4.88 | |

Sent to **BCI dba Coca Cola Bottling Co Inc**
 Street, Apt. No. **949 Mapunapuna Street**
 City, State, ZIP+4 **Honolulu, Hawaii 96819**

Postmark Here

7004 2510 0003 2979 0560

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: BCI dba Coca Cola Bottling Co. Inc
Inspection Site: 949 Mapunapuna St
Hon, HI 96819
Issuance Date: 06/24/2005

| | | |
|--|---|------------|
| Summary of Penalties for Inspection Number | | 308483445 |
| Citation 01, Serious | = | \$3,575.00 |
| TOTAL PENALTIES | = | \$3,575.00 |

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.